IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 10088 of 2004

Between:

B.Arunachala Rao S/o B.Lakshmipathi Rao
working as General Manager, Tirupathi Telecom District, Chittoor Dist

..... PETITIONER

AND

1 Union of India rep. by its Secretary, Ministry of Telecommunications
Sanchar Bhavan, Ashoka Road, New Delhi
2 The Chairman &Managing Director, Bharat Sanchar Nigam Limted
BN-148, Statesman House, Barkambha Road, Connought Palace, New Delhi-001
3 Chief General Manager, Telecom, Andhra Pradesh Telecom Circle
Sanchar Bhavan, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more in the nature of Writ of Certiorari, calling for the records relating to and connected with the order dt. 21/04/2004 O.A. 39/2004 and batch on the file of the Central Administrative Tribunal , Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No.8/105/2001-Vig.II, dt. 17/08/2001 issued by the 1st respondent and quash both the orders, as the charge sheet is based on stale charges, illegal, arbitrary and violative of Art. 14,16 and 21 of the Constitution of India and rules 14(2) of CCS (CCA) Rules and consequently hold that the Charge Sheet is vitiated on the ground

of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court in the interest of Justice.

WRIT PETITION NO : 10352 of 2004

Between:

B. Arunachala Rao S/o. B. Lakshmipathi Rao
Tirupathi Telecom District, Chittoor District.

..... PETITIONER

AND

1 Union of India, rep. by its Secretary, Ministry of Telecommunications, Sanchar Bhavan, Ashoka Road, New Delhi.
2 The Chairman & Managing Director, B.S.N.L., BN-148, Statesman House, Barkambha Road, Cannought Place, New Delhi-001.
3 Chief General Manager, Telecom A.P., Telecom Circle, Sanchar Bhavan, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to and connected with the Order dt. 21.4.2004 in O.A.38/2004 and batch on the file of the CENTRAL ADMINISTRATIVE TRIBUNAL, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No.8/98/2001-vig.II, Dt. 13.8.2003 issued by the 1st respondent and quash both the orders, as the charge sheet is based on state charges, illegal, arbitrary and vioalative of Articles 14,16 and 21 of the constitution of India and a Rule 14(2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court.

WRIT PETITION NO : 10353 of 2004

Between:

B. Arunachala Rao S/o. lakshmipathi Rao
Tirupathi Telcom District, Chittoor District.

..... PETITIONER

AND

1 Union of India rep. by its Secretary Ministry of Telecom, Sanchar Bhavan,

Ashoka Road, New Delhi.
2 The Chairman & M.D., B.S.N.L., BN-148, Statesman House, Barkambha Road, Connought place,
New Delhi-001.
3 Chief General Manager, Telecom, A.P. Telecom Circle, Sanchar Bhavan, Nampally, Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more in the nature of writ of certiorari, calling for the records relating to and connected with the Order dt. 21.4.2004 in O.A.No. 185/2004 and also common judgments in O.A.38/2004 and batch on the file of CENTRAL ADMINISTRATIVE TRIBUNAL, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No.8-399/2003-vig.II, Dt. 18.12.2003 issued by the 1st respondent and quash both the orders, as the charge sheet is based on state charges, illegal, arbitrary and vioalative of Articles 14,16 and 21 of the constitution of India and Rule 14(2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court.

WRIT PETITION NO : 10354 of 2004

Between:

B. Arunachala Rao, S/o. B. Lakshmipathi Rao,
Tirupathi Telecom District, Chittoor District.

..... PETITIONER

AND

1 Union of India, Rep. by its Secretary,
Ministry of Telecommunications, Sanchar Bhavan, Ashoka road,
New Delhi.
2 The Chairman & Managing Director, Bharat Sanchar Nigam Limited,
BN-148, Statesman House, Barkambha Road, Connought Palace, New Delh001.
3 Chief General Manager, Telecom, Andhra Pradesh Telecom circle,
Sanchar Bhavan, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, particularly a Writ in the nature of Certiorari, calling for the records relating to and connected with the Order dated 21-

4-2004 in O.A.No. 42/2004 and also common judgments in O.A. 38/2004 and batch on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No. 8/217/2003-Vig.II, dated 22-10-2003 issued by the 1st respondent and quash or set a side both the orders as the charge sheet is based on state charges, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and Rule 14(2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court.

WRIT PETITION NO : 10355 of 2004

Between:

B.Arunachala Rao, s/o B.Lakshmipathi Rao,
Tirupathi Telecom District, Chittoor District.

..... PETITIONER

AND

1 Union of India, rep., by its Secretary, Ministry of Telecommunications,
Sanchar Bhavan, Ashoka Road, New Delhi.
2 The Chairman & Managing Director, Bharat Sanchar Nigam Limited,
BN-148, Statesman House, Barkambha Road, Connought Palace, New Delhi-001.
3 Chief General Manager, Telecom, Andhra Pradesh Telecom Circle,
Sanchar Bhavan, Nampally Station Road, Hyderabad.

....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to and connected with the order dated 21-4-2004 in O.A.No.38/2004 and batch on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No.8-207/2003-Vig.II, dated 16-9-2003 issued by the 1st respondent and quash or set aside both the orders, as the charge sheet is based on stale charges, besides being illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India, as well as the Rule 14(2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court, as well as this Hon'ble Court

WRIT PETITION NO : 10361 of 2004

Between:

B. Arunachala Rao, S/o B. Lakshmipathi Rao,
Tirupathi Telecom District, Chittoor District.

..... PETITIONER

AND

1 Union of India, rep. by its Secretary,
Ministry of Telecommunications, Sanchar Bhavan, Ashoka Road,
New Delhi.
2 The Chairman & Managing Director, Bharat Sanchar Nigam Limited,
BN-148, Statesman House, Barkambha Road, Connought Place, New Delhi - 001.
3 Chief General Manager, Telecom. Andhra Pradesh Telecom Circle,
Sanchar Bhavan, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more in the nature of Writ of Certiorari, calling for the records relating to and connected with the Order dated 21-4-2004 O.A. 186/2004 and batch on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No. 8/399/2003-Vig.II, dated 18-12-2003 issued by the 1st respondent and quash both the orders, as the charge sheet is based on stale charges, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and Rule 14 (2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court in the interest of Justice.

WRIT PETITION NO : 10362 of 2004

Between:

B.Arunachala Rao, s/o B.Lakshmipathi Rao,
Working as General Manager, Tirupathi Telecom District, Chittoor District.

..... PETITIONER

AND

1 Union of India, rep., by its Secretary, Ministry of Telecommunications,
sanchar Bhavan, Ashoka Road, New Delhi.
2 The Chairman & Managing Director, Bharat Sanchar Nigam Limited,
BN-148, Statesman House, Barkambha Road, Connought Palace, New Delhi-001.
3 Chief General Manager, Telecom, Andhra Pradesh Telecom Circle,
Sanchar Bhavan, Nampally Station Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more in the nature of writ of certiorari, calling for the records relating to and connected with the order dated 21-4-2004 in O.S.No.41/2004 and also common judgments in OA No.38/2004 and batch on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and also records relating to and connected with charge sheet No.8-265/2003-Vig.II, dated 13-10-2003 issued by the 1st respondent and quash both the orders, as the charge sheet is based on state charges, illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and Rule 14(2) of CCS (CCA) Rules and consequently hold that the charge sheet is vitiated on the ground of delay in issuing the charge sheet and also in view of catena of decisions of the Hon'ble Supreme Court.

Counsel for the Petitioner:MR.C.A.R.SESHAGIRI RAO

Counsel for the Respondent No.: MR.B.NARASIMHA SARMA

The Court made the following :

COMMON JUDGMENT:

(per G. Bikshapathy J)

1. All the Writ Petitions can be disposed of by a common judgment as they arise out of common Order passed by the Central Administrative Tribunal, Hyderabad in O.A.NOs. 38 to 42, 185 and 186 of 2004, dated: 21.4.2004.

2. The Writ Petitioner is presently working as General Manager, Tirupathi Telecom District, Chittoor District. He had worked earlier as Deputy General Manager in Mumbai from 1996 to 1998. The present charge memos have been issued to the petitioner alleging that he had committed certain irregularities during the period when he worked as the Deputy General Manager at Mumbai and that they constitute misconduct under Rules 14(2) of C.C.S.(CCA) Rules.

3. It is the case of the petitioner that the charge sheet as issued and the charges as framed are vague and unintelligible. It is also submitted that there is long lapse of

time in issuing charge memo relating to the period 1996-1998. Therefore, the very framing of the charge is hit by principle of staleness. It is also his case that under the Rules and the guidelines issued by the department, he is the countersigning authority and execution of the work is the responsibility of the lower engineering staff. It is only on the basis of the certification made by the lower authorities the counter signature was made by him and therefore, he is not responsible for any irregularities alleged to have taken place. It is also on record that in respect of the one charge memo one Enquiry Officer was already appointed and in respect of the other charge memos, the department is yet to take action. The case of the petitioner further is that he will not be in a position to defend his case in view of the long lapse of time and nothing could have prevented the authorities from bringing to the notice of the alleged irregularities at the earliest possible time and thus the petitioner will be put to serious prejudice if the enquiry is conducted. Therefore, he filed O.As. before the Central Administrative Tribunal for quashing the charge memos issued to him. The learned tribunal after considering the matter and after hearing the parties, held that there is no irregularity or illegality in the charges framed against the petitioner and that the authorities were competent to issue charge memos and dismissed all the applications by a common Order dated: 21.4.2004. Challenging the said Order, the present batch of Writ Petitions have been filed.

4. The learned counsel for the petitioners Mr. Meherchand Noori vehemently submits that for the lapses on the part of the department, the petitioner cannot be made victim. The works were completed and the bills were countersigned by the petitioner long ago and the charges have now been proved after a lapse of nearly 5 years, it is rather impossible for the petitioner to defend his case. Further, the learned counsel would submit that the charges are so vague as to disable the petitioner from taking any effective defence in his case. The learned counsel would further submit that whatever the action was taken by him in the capacity of Deputy General Manager, the same is in accordance with rules and lastly he submits that he is only a countersigning authority and he is not the authority for the execution and ensuring the proper execution of the works. The executing authority is the concerned engineers, who are required to supervise the work and it is only after

they satisfy that the work has been completed in accordance with the schedule given to the Contractor, they will place necessary bills duly certified for counter-signature as the petitioner is only countersigning authority. Therefore, the learned counsel would submit that the charges are only framed at the fag end of the service to harass and humiliate him and see that his post-retirement life is not peaceful. It is also his case that when he executed the works, the petitioner has meticulously attended to all things and in fact the higher authorities have commended and appreciated him for the work completed within record time and having given commendations and appreciated the work and now giving charge memos would nothing but demoralising the honest, upright Officer.

5. It is also the contention of the learned counsel for the petitioner that in order to save the higher Officers, the petitioner is made a sacrificially goat at the fag end of his service and contending so, he relies on various decisions of the Supreme Court on this aspect.

6. On the other hand, the learned Standing Counsel for the Central Government submits that it is wholly premature for the petitioner to place all this material before this Court when all the charges have been framed, it is for him to make necessary explanation and participate in the enquiry and ultimately if he is not found guilty, he will be exonerated of the charges. But at the threshold to approach the Court, and to interdict the process of enquiry is wholly uncalled for and goes counter to the principles laid down by the Supreme Court in various cases. The learned Standing Counsel for the Central Government further submits that the vagueness and the delay in filing charge sheet cannot be fatal to the departmental case. He will be afforded with all the opportunities in the department and that the O.As. have been quite rightly rejected by the tribunal.

7. The issue that calls for consideration is whether the Order passed by the tribunal is valid?

8. Sequence of events as narrated above would clearly indicate that the charge memos were issued to the petitioner alleging deficiency or irregularity in the works undertaken by the department during the period he worked as Deputy General

Manager.

9. It is not in dispute that he is the countersigning authority, and it is his case that he is the controlling authority, but he is not responsible for proper execution of work, which is purely technical and the engineering staff are required to ensure this.

10. But, the question that calls for consideration is whether it is appropriate time for the petitioner to approach the tribunal or High Court?

11. The charges have been framed and the explanation have been called for in some cases Enquiry Officer is understood to have appointed. Any finding as to the vagueness of the charges, staleness of the charges and also on the merits of the case is wholly premature at this point of time. But, however, the tribunal went into this contention and recorded findings that the charges are quite valid and competent. Since the vagueness, staleness and the legality of the charges are yet to be gone into by the appropriate authority and the enquiry is yet to be conducted, we find that it is not appropriate time or appropriate stage to go into these aspects. Ultimately, if the charges are held proved against the Officer, he has a right to challenge the same before the appropriate authority or tribunal as the case may be and thus we find that the approaching the tribunal at this juncture is wholly premature and unwarranted.

12. The learned counsel for the petitioner, however, further submits that by issuing separate charge memos, the department has tried to make a mountain out of mole hill and the substratum of charges in all the cases is one and the same namely counter-signing without actually verifying that the work was completed or not. But, these are all the matters, which are to be considered by the enquiring authority or disciplinary authority as the case may be and we do not like to record any findings on this aspect as it would prejudice both the parties.

13. It is also lastly contended that the department has framed number of charges even though the petitioner as a Deputy General Manager maintained integrity and devotion to duty. But, this contention also we are not inclined to consider at this stage. We leave it open to the petitioner to take all possible defences and make objection, which are available to him under law. The apprehension of the petitioner

is that the department is determined to harass and impose punishment under any circumstances. Even there are circulars under which the counter signing authority is not responsible for any irregularities. We also do not agree with this contention and we are of the considered opinion that the department while dealing with the charges shall act fairly and impartially. The apprehension of the petitioner is that once the punishments are imposed illegally or unreasonably again challenging them before appropriate forum, it would be nothing but harassment, humiliation as he has only two years to go to retire from the service. We find that the department having issued charge memos has to proceed with in accordance with rules. But, however, since the evidence to be adduced in all the cases is identical except different contractors, we find it appropriate that the department should conduct a joint enquiry in respect of all the charges if it intend to proceed against the petitioner.

14. As rightly pointed out by the learned counsel for the petitioner, the prolongation of the enquiry is nothing but humiliation to the Officer at the fag end of the service. Hence, we direct the authorities to conclude the proceedings and pass appropriate final Orders within a period of six months from the date of receipt of a copy of this Order. Since we held that the findings of the Tribunal regarding the competency, staleness and vagueness etc. of the charges are unwarranted at this stage, we permit the petitioner to re-urge the said grounds before the enquiry/disciplinary authority as the case may be. We further make it clear that the disciplinary authority shall proceed with the matter uninfluenced by any observations or findings recorded by the tribunal or this Court.

15. The Writ Petitions are accordingly disposed of with the aforesaid directions. No costs.

06-08-2004 _____

G. BIKSHAPATHY. J

CHV

_____

B. SESHASAYANA REDDY,J

...ASST. REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Secretary, Union of India, Ministry of Telecommunications
Sanchar Bhavan, Ashoka Road, New Delhi
2 The Chairman & Managing Director, Bharat Sanchar Nigam Limted
BN-148, Statesman House, Barkambha Road, Connought Palace New Delhi-001
3 Chief General Manager, Telecom, Andhra Pradesh Telecom Circle
Sanchar Bhavan, Nampally Station Road, Hyderabad.

4. The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

5. Two CD copies

L.R. COPY TO BE MARKED: Yes.